

The Examiner has rejected claims 1, 2, 5-7, 10, 12, 13, 15 and 20 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 2,819,923 to Anderson in view of U.S. Patent No. 4,253,544 to Dalmaso. Applicants' invention is clearly distinguishable over Anderson due to the presence of an elastic cord as well as fabric covering over the length of the cord. Dalmaso includes an elastic cord and a partial fabric covering but there is no motivation to combine the references.

References may only be combined when there is a teaching, suggestion or motivation to combine them. *In re Imperato*, 179 USPQ 730, 732 (CCPA 1973) (holding that "the mere fact that those disclosures can be combined does not make the combination obvious unless the art also contains something to suggest the desirability of the combination"). "It is well established that before a conclusion of obviousness may be based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references." *Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc.*, 37 USPQ 2d at 1626 (F.Cir. 1996). The court then explained that this requirement must originate either: (1) expressly from the referenced systems themselves, (2) from knowledge of those skilled in the art, or (3) from the nature of the problem to be solved.

In this case, there is absolutely no motivation or any reason to modify the animal carcass sling of Anderson to include the stretchable cord of Dalmaso and there is lacking in Anderson any motivation to do so simply by virtue of the manner in which the

animal support is used. Substitution of an elastic cord in Anderson is impractical and undesirable. The animal support sling of Anderson is typically used by hunters desiring to support game and carcasses above the ground to facilitate skinning and dressing. An elastic or stretchable cord would allow heavier carcasses to hang down lower, making them more likely to be preyed upon by other animals or cause the cord to break. Further, an elastic cord would make it impractical and dangerous to perform gutting operations on the carcass while it is suspended from a tree with an elastic cord. The elastic cord would result in the carcass moving a great deal more than if a steel cable is used without any elasticity. Without independent suggestion, the prior art is to be considered merely inviting unguided and speculative experimentation which is not the standard which with obviousness is determined. Amgen, Inc. v. Chugai Pharmaceutical Co., Ltd., 18 USPQ 2d 1016 (F.Cir. 1991).

Further, there is a clear lack of motivation to combine the cover as taught by Dalmaso with the device of Anderson. When dealing with a carcass, the cover would become covered with blood and other material and would not be practical in any way. One skilled in the art would not look to cover the steel cable with a fabric covering.

Furthermore, to suggest adding a stretchable cord to Anderson for the purpose of "providing an alternative, flexible, mechanically equivalent material" (steel wire cable) for supporting game would be contrary to the intended use of Anderson. Anderson is not concerned with solving the problem of providing a suspension

tether for toys or the like for easy retrieval by an adult or infant. It is submitted that Anderson is not analogous art and is not concerned with solving the problems associated with a toy tether. A §103 rejection based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the reference, is not proper and the *prima facie* case of obviousness cannot be properly made. *In re Gordon*, 221 USPQ 1125 (F.Cir. 1984).

Finally, even considering the test in *In re Napier*, 44 USPQ 2d 1782 (F.Cir. 1995) ("the test is whether the combined teachings of the prior art, taken as a whole, suggests the modifications to persons of ordinary skill in the art.") A person of ordinary skill in the claimed art would not look to Anderson or Dalmaso to solve the problem treated by the claimed invention. *In re Pagliaro*, 210 USPQ 888 (CCPA 1981).

Dalmaso is also not analogous art. One looking to a solution of the problem of a toy tether would not be apt to consider a warning flag device. Those skilled in the art would not look to a lanyard having a warning flag to solve the problems associated with an infant throwing toys off of a highchair. Further, Dalmaso does not disclose a fabric covering, covering the full extent of the elastic cord. This is a double departure on an important feature of applicants' invention over the prior art which is a strong indication of patentability. The importance of the elastic cord and the cover is clearly set forth in independent claim 1, independent claim 12, independent claim 17 and independent

claim 18.

Claims 17-19 have been rejected under 35 U.S.C. §103(a) as unpatentable over Pollock in view of Dalmaso and Anderson. Pollock does not teach an adjustable loop or the limitation of enclosing the length of cord with a cover. There is no motivation or teaching in Pollock to look to Dalmaso or Anderson.

It is therefore urged that the claims as now presented for consideration are in allowable condition and action to that end is courteously solicited. If any issues remain to be resolved, it is requested that the Examiner contact attorney for applicant at the telephone number listed below.

Respectfully submitted,



By: Ellen Reilly  
Registration No. 50,344  
Attorney for Applicant  
1554 Emerson Street  
Denver, Colorado 8018  
Area Code 303 839-8700

CERTIFICATE UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing Amendment is being deposited with the United States Postal Service as first class mail in an envelope addressed to MAIL STOP: AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, this 24<sup>th</sup> day of January, 2005.

